A

LETTER

TO THE HONOURABLE

JAMES ABERCROMBY, M. P.

BY

JOHN HOPE, ESQ.

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TO

THE HONOURABLE

JAMES ABERCROMBY, M. P.

SIR,

IN the different reports of the speech delivered by you in the House of Commons, on the 25th of June, in moving for a committee of inquiry into the conduct of the Lord Advocate, and the other Law Officers of the Crown in Scotland, there appear a variety of statements and reflections pointed against me, of which I lose no time in taking notice in the most public manner in my power. I am sufficiently well assured of the general accuracy of these reports, in so far as the topics of the present letter are involved, to feel myself justified in taking this step.

The improbability that any occasion will occur in the House of Commons, during the present ses-

sion of Parliament, of which my friends can avail themselves, in order to meet your reflections on my conduct, makes me desirous no longer to delay a public answer to such part of the charges against me, to which it is proper at present to advert.

The charges against me amount in substance to this :—That I had manifested, in the course of a private action, a marked and rancorous spirit of hostility—a "furious zeal" against Mr Stuart of Dunearn, originating in party motives; and that, from these feelings, and in order to create an undue prejudice against Mr Stuart, *in his approaching trial,* I had instituted a wanton and groundless prosecution against a person of the name of Borthwick, on account of transactions in which Mr Stuart might be supposed to be implicated, without ever intending to bring that individual to trial, and that I purposely kept this prosecution hanging over the heads of Mr Stuart and Borthwick, though I did not sincerely believe that there were grounds for a criminal charge against the latter.

The way in which a colour was given to this accusation will, on examination, appear to be somewhat singular. And that, in some quarter or other, there has been, in the *preparation* and statement of the charges, *most insidious misrepresentation,* the detail which I am now to make must, I am persuaded, satisfy every one, who will take the trouble to attend to the facts of the case.

In the course of the premeditated and artful ar-

gument which you directed against me, I observe, in the first place, that you have not only thought fit to introduce into a discussion in the House of Commons, the merits of a civil action of damages, (at present in dependence,) instituted by Mr Stuart, against the printer of the Glasgow Sentinel, in consequence of certain paragraphs in that paper alleged by him to be slanderous, but that you have also chosen to make the Line of Defence maintained by the Counsel for the Defendants, and their conduct in the discharge of private professional duty, the subject of animadversion and censure in the British Parliament.

The foundation of the charge against me of malicious prosecution rests on the conduct and feelings, attributed to me as counsel in that action.

Whether I *am* counsel in that case or not, will presently appear.—In the first instance, having been attacked in that character, I wish to draw the attention of the public to the injustice, the illiberality, and, I fear, I must add, the malevolent spirit which that attack manifests in some quarter or other.

An affair sufficiently notorious occurred last year between Mr Stuart and Mr Duncan Stevenson.—Some time thereafter Mr Stuart commenced a correspondence with the Lord Advocate, upon the subject of some alleged libels, said to be published against him in the Beacon. The printers of the Glasgow Sentinel took up this subject, and

expressed (it is said in slanderous terms) their opinion of Mr Stuart's conduct. Mr Stuart (in October 1821) raised a civil action of damages against the printers of that newspaper, on the ground that their remarks were *false*, slanderous, and injurious. Gentlemen of the bar were employed as counsel for the defendants; and it appears that they thought it to be their duty to maintain in substance the following defence, viz.—

That the statements complained of as libellous were all true, and could be proved. In particular, that it could be proved, that Mr Stuart had assaulted Mr Stevenson with a horse-whip; —that Mr Stevenson had defended himself with his cane, till his arms were pinioned by servants, or persons employed by Mr Stuart, or who had been brought by him from Fife, on purpose to be present when he should carry into effect his premeditated design of assaulting Mr Stevenson;—that Mr Stevenson demanded satisfaction for this outrage;—that Mr Stuart, while he admitted having perpetrated the outrage, refused satisfaction;—that Mr Stuart was posted as a coward, a ruffian, and a scoundrel;—that Mr Stuart, at his own expence, printed and published his correspondence with Mr Stevenson, and an account of the whole affair, and also his correspondence with the Lord Advocate.

These were the principal statements contain-

ed in the publication complained of as libellous, and the truth of them was averred by the defendants; but that *publication* also contained the following observations: "When the heart-less ruffian seeks for revenge for ideal injury, "by *employing his minions to hold the arms of* "*the person he abuses*, we would consider "him undeserving of the satisfaction of a *gen-* "*tleman*; and we would desire to hold him up "to the unalloyed opprobrium of mankind." This passage was also complained of by Mr Stuart, as a *false* and *malicious* libel. On the other hand, the pleading for the defendants concluded by an "offer to prove, by the evidence of per-"sons well skilled in the laws and practice of "honour, that the conduct of the pursuer, in "regard to the said affair with Mr Stevenson, "was most ungentlemanly and deserving of "every condemnation."

In short, on the part of the printers, their Counsel denied that the passages are *false*, malicious, or slanderous. They averred that Mr Stuart had made the subject the property of the public press: —that they were entitled to comment on facts brought under public notice by his own publications:—They offered to prove that the facts stated in the alleged libel were true:—They offered to *justify* the libel.

Whether the defendants have evidence to prove these statements I am ignorant: Whether the

above line of defence is competent, in justification, or in mitigation, I am not presumptuous enough to decide. But that the Counsel for the defendants were entitled to state any defence on the part of their clients, which they thought the facts admitted of, is a proposition, the truth of which the spirit of party alone could lead any man to dispute. In reference to the very unfair and extraordinary comments made by you and Sir James Mackintosh on the paragraph of the defence last quoted, it is material to observe, that it is wholly unwarrantable to ascribe that reference to public opinion as necessarily applicable to Mr Stuart's refusal to fight Mr Stevenson. The passage in the newspaper of which Mr Stuart seemed to have most reason to complain, was that already quoted, in which he is accused of employing persons to hold the arms of the man he assaulted. That averment the defendants offer to prove; and the passage in the pleading, to which you adverted in so singular a manner, bears reference, as I understand, generally to the whole of Mr Stuart's conduct, and particularly to his employing men to hold Mr Stevenson's arms.

The paper containing this plea was, I understand, lodged in the Jury Court, in the course of the month of January last. Since that period, Mr Stuart, as I am informed, has not taken one step to forward his case—to obtain the opinion of the Court on the legality and competency of this line

of defence, (if he has any objections to its legality,) or to bring the facts to an issue before a jury. The cause is, however, still in dependence—the legality or relevancy of the plea of the defenders is still *sub judice*, and the opinion of a jury must be taken on the merits of the action, unless it is abandoned by Mr. Stuart.

In these circumstances, you and Sir James Mackintosh,—English lawyers,—think fit to make the merits of that action—the pleas maintained by the defendants, and the conduct of their Counsel, the subject of virulent invective in the House of Commons. You pronounce a confident and violent opinion on the case of the defendants, on which the Court and a Jury are still to decide.

On the gross injustice to the defendants, resulting from this perversion of the privileges of Parliamentary discussion, in order to aid the private action of a political associate, and to prepossess and prejudice the minds of the public, from whom the Jury must afterwards be selected, it is needless to enlarge.

But your attack on the Counsel, acting, or supposed to be acting for the defendants, requires more particular animadversion. The character, and privileges, and usefulness of the Bar, and the interests and rights of the subjects at large, are, indeed, assailed in a manner not less novel than alarming, if the conduct of Counsel in a private case, *not yet decided*, is to be the fit and legiti-

mate topic of invective, insinuation, and abuse in the British Parliament. If the characters, the talents, and the professional knowledge, aye, and the motives of Counsel, are to be impeached in the House of Commons, by every violent political partizan, whose friend may be involved in an action of doubtful issue, which they are called upon to defend; and if the pleas maintained in that action are to be made the subject of popular declamation, and severe stricture in Parliament, an advantage may no doubt be gained to the party in the action in whose favour such interference is exerted: But it is in vain to conceal that this is an advantage gained at the expence of the justice due to the other party, and is a departure from that regard to judicial proceedings, which has ever been observed as one of the most sacred maxims of British Legislation.

A more serious attack upon the privileges, and rights and proceedings of the Bar, or proceedings fraught with more danger to the interests, which private parties may have to defend in Courts of Justice, can hardly be imagined, than have been exhibited in the conduct of yourself and Sir James Mackintosh.

The comments upon the merits of this action seem not to be the only instance, in which you have thought fit to invade the private right and interests of parties, at this very moment litigating in Courts of Law, the points which you have se-

lected as the topics of Parliamentary discussion. You have vehemently maintained that legal property in a newspaper is created by a subscription to a bond of credit to a banking-house for a specific sum, though that very question is at this moment the subject of judicial consideration in a Court of Law. But then it happens that your opinion coincides with the pleas and the interests of a political friend. In like manner, you have chosen to prejudge the merits of two other actions of damages, and have loudly condemned a newspaper, for daring to censure the public conduct of a Magistrate of a Scotch burgh, or to *persecute* him, as you are said to represent the matter. But then that Magistrate happens to be "attached to the noble family of Hamilton," as you are reported to say, and doubtless may on that ground be entitled to a sacred and inviolable immunity from the political animadversion, of which the Magistrates of Scotch Burghs seem generally to be considered the fair objects. Again, you roundly asserted, as matter of public notoriety, that an official individual in Hamilton had *conducted* a newspaper in that town, who has, in a private action against him, founded on that very averment, denied that responsibility. But then, that action happens to be at the instance of this supporter of the "Noble Family" of Hamilton, and the case of the defendant may in this manner be prejudged and condemned. And last of all, I observe, with unqua-

lified astonishment, that you actually proposed to the Commons of England, to subject to what you are said to call a "full, fair, and open examination," before a committee of the House, a young and valued friend of mine,—of great promise and ancient family— a private gentleman, *in no public situation whatever*, on the *allegation*, forsooth, that, in this land of liberty, he had dared to write articles in a newspaper, when you must have known, that at this moment a private action of damages was in dependance against that gentleman, which turned on that very allegation. But then that action happens to be at the instance of a conspicuously active political associate; and this unprecedented and inquisitorial examination was expected, probably, to supply the evidence which might be awanting in the legal proceedings of your friend.

But it is not merely on such general grounds that I now wish to notice your conduct. I much rather wish to advert to the want of good taste—of propriety—of candour, which your attack manifests. You—an English barrister—exercising those very rights which you have so directly attacked, and called upon (it may be), to discharge the very same duties, which others in your profession are bound to discharge, have made the conduct and motives of Scotch Counsel, in a private and depending case arising in a Scotch Court, the subject of abuse and personal reflection in the British

House of Commons. The members of your own profession in England will, I am persuaded, unite with the Bar of Scotland, in reprobating the presumption which characterises so unusual a step, and the violent spirit of party and of political hostility which it betrays.

There is something, it must be admitted, peculiarly becoming and graceful on the part of Gentlemen of the Bar of England, who may enjoy the opportunity of public invective in the House of Commons, availing themselves of that advantage, in order to arraign the motives—to censure the conduct—and to question the professional skill and judgment of Scotch Counsel, in the management of a private action, which hitherto has not even advanced so far, as to be brought under the opinion and consideration of the Court to which it belongs. But when the Counsel, who are the object of so unusual an attack, happen to be young gentlemen, recently called to the Bar, whose prospects and professional character may be the more easily injured by the vehement and unqualified impeachment of their motives, and the sweeping condemnation of their prudence and knowledge, and when the attack, on the other hand, is made by those who have acquired the standing and the authority of Seniors, and who are aware that they influence the opinions of the party in the country with which they are connected, the generous and high-minded feeling—the moderation, kindliness, and dignified

character, exhibited in such an attack, will, no doubt, be duly appreciated.

That attack, however, being now public,—an attempt having been made to intimidate and stigmatise the Counsel, who are employed against your political friend—and the merits of the action having been selected as the topic of inflammatory and laboured Parliamentary invective, the action may now, perhaps, be *resumed*, in the hope of deriving aid from your interference, and as if to furnish a practical illustration of the notions, which you entertain as to the impartial and fair administration of justice between man and man.

I have now, however, to inform you, that in representing ME as Counsel in that case, and in directing your reflections and insinuations against me in that character, you either have acted upon most false information,—(if you have received any information on the subject,)—or at least upon most insufficient and unwarrantable grounds. I *am not*, and never *was*, Counsel for Mr Alexander or the other defendant, in the action against them at Mr Stuart's instance. I drew no papers—I gave no advice or assistance, in that action: and *my only knowledge of its merits or details*, is that, which I have been obliged to acquire, in order to meet your wanton, illiberal, and extraordinary attack.

At the commencement of the action, I was applied to, in the view of being retained as Counsel for the defendants. Understanding that they had

the efficient and able assistance of Mr Forsyth and Mr M'Neill, I stated that circumstances of a personal nature rendered me desirous not to be employed or consulted in the case;—and, though not entitled to withhold my professional assistance in any case of the sort, *I begged to be allowed not to act in this particular instance.* You are well aware, that if the party had insisted upon having my aid, there was no professional reason which I could with propriety have assigned, or on which I could have been entitled to decline the case. If I had anticipated the injustice which the defendant was to suffer from the discussion of his case in Parliament, or that an attempt was to be made to intimidate and deter his Counsel in the discharge of their duty, most assuredly I would not have allowed any personal consideration or feeling to prevent me from undertaking Mr Alexander's case, which I now regret that I declined.

Of the conduct, management, or particular merits of the case, I knew nothing until this day. It appears, that the clerk of the defendant's agent, not being able to find Mr M'Neill at the time when the paper in question was about to be lodged, had brought it to me to sign *for* Mr M'Neill. Every one acquainted with the rules and practice of the Scotch Courts, is perfectly aware, that Advocates are allowed, and are continually in use, to subscribe in this manner, pleadings for another, as it frequently happens, that the subscription of the

lawyer who draws the paper cannot be obtained before the time, or the particular hour, at which the paper must be lodged. Papers are accordingly subscribed every day by one Counsel *for* another—in the way in which, it appears, I had subscribed the paper in question—"For Mr D. M'Neill, "John Hope,"—not even knowing the parties in the case. No responsibility for the contents of the paper is inferred or created by such signature. I state that as matter of universal understanding, and of daily practice. Indeed, the mode in which my name appeared in the paper in question, must have proved at once, to every person acquainted with the practice of the Scotch Courts, that I was not Counsel in the case.

Mr Stuart, I understand, was offended at the contents of that paper, and *personally* applied, *some time after the paper was lodged*, to the agent for the other party, to know if I was Counsel in the case, or whether I had merely subscribed the paper in the usual way for another Counsel. *Mr Stuart was informed that I was not Counsel, and that I knew nothing of the paper.*

It appears that those friends of Mr Stuart, who superintended the publication of the Report of Mr Stuart's Trial, thought fit to publish, without explanation, both names appearing at the paper in question, though *these names were not read or mentioned at the trial.* That the names were so printed in this particular manner, *for the purpose*

of representing me, to persons ignorant of Scotch forms, as the Counsel in the case, and of affording the appearance of a pretext for intended political attack—the use actually made by you, immediately thereafter, of the mode in which that part of the Report is printed, leaves me little room to doubt. The anxiety manifested in that Report, to explain every other circumstance which might not be understood by persons, unacquainted with Scotch practice and forms, renders the printing of this formal subscription, without explanation, the more remarkable, when considered in connection with the use immediately made of it by you in Parliament. The report of the trial, which is of great length, was prepared also with a rapidity, which seems to show a desire to be in time for the motion made by you in Parliament. Understanding (erroneously) that the report had been revised by Mr Jeffrey and Mr Cockburn, (the leading Counsel in the case,) I took measures, on seeing the use to which this part of the Report had been turned, to inquire whether either of them had sanctioned or revised this part of it, communicating my opinion, that I had no doubt of the purpose, and that I considered it an *unfair* and *ungentlemanlike* proceeding. Both of these gentlemen frankly declared that they had not seen that part of the Report before publication, and disclaimed having authorized it.

The circumstance, that these names are printed in a way calculated to mislead, is the more remark-

able, that it cannot be defended on the ground of adhering *literatim* to the procedure on the trial, since part of that particular paper, read (as I am informed) at the trial, is not printed;—and in the same manner, a very remarkable passage is omitted in one of the letters from Mr Stuart to Mr Gibson, and no appearance even of an omission is noticed, in the way in which the letter is published.

It is likewise a circumstance not a little remarkable, that this mode of representing and printing the signature at the Record, is different from the mode observed in practice, (I believe I may say invariably,) in printing the pleadings; and it is known, that a great part of the pleadings in Scotch Courts are printed. Though it happens, perhaps in three cases out of ten, that the Record is subscribed in the way I have mentioned by one Counsel *for* the Counsel who drew the pleading, yet, the printed copies for the use of the Court, the parties, the Bar, and all concerned, uniformly bear merely the name of the Counsel who drew the pleading, and the printed copies never enable one to ascertain, whether the record has been subscribed by the Counsel who drew the pleading, or by another for him.

The use made by you of the line of defence thus ascribed to me in this action, in order to give a colour to the statement of the case of Borthwick, sufficiently shews the *importance attached to the attempt to represent* ME as one of the Counsel em-

ployed against Mr Stuart in the private action already mentioned. The whole of your speech proves the copious and artful information which you had received from Scotland; and the circumstance to which I have now adverted, coupled with the serious use immediately made by you, of that circumstance, in Parliament, is a coincidence which it requires some charity to ascribe to chance.

If, on the simple fact, that you saw in the Report of Mr Stuart's trial, the words, "For Mr D. "M'Neill, John Hope," you, and Sir James Mackintosh, have *assumed* that I was Counsel in the case, and without further information or inquiry, have thought proper, on this ground, to include me in your invective: then you will allow me to say, that the ignorance you have betrayed of the rules and practice of Scotch Courts, proves how admirably qualified you are to comment on the professional conduct of Scotch Counsel. I must further desire you to consider the impropriety and injustice of making an attack in Parliament on the conduct of private gentlemen, without even taking the trouble to ascertain whether there was the slightest ground for the attack.

I must likewise observe, that the words, "For "Mr D. M'Neill, John Hope," seem of themselves to signify, *to any professional person*, though not connected with the Scotch Bar, that I had not subscribed the paper on my own account, or as a production of my own, for which I was at

all responsible. At least, the words are, I think, of that description, that any person of *professional* habits, influenced by a due consideration for the character of others, and not actuated by a desire to make the attack for a particular purpose, would have hesitated before he ventured, upon such grounds, to utter a violent invective on the legal character, the professional judgment, and even the motives, of a gentleman of the Bar.

The duty peculiarly incumbent on those, who know that, in the exercise of the right of Parliamentary discussion, they are invested with high and unquestionable impunities; and the duty which high-minded men must, in that situation, feel particularly solicitous to perform, is to examine most strictly the grounds on which they accuse, and to proceed with caution, temper, and forbearance in promulgating, with the privileges and authority of that situation, statements which involve the characters of others. Whether *You* have attended to that duty on the present occasion, let the gentlemen of England decide.

If, on the other hand, you have been induced, by information from Scotland, to believe that I acted as Counsel against Mr Stuart, I can only ascribe the statements made to you to *intentional misrepresentation*. Every person connected with the case knew perfectly well that I was not Counsel. But I feel some desire to know both the nature of such information, if you received any, and

the source from which it came. In estimating the propriety of your motives, the apparent respectability of the quarter from which you received your information, may be important. After the communication made to Mr Stuart on this very subject, and when no man connected with Scotch law practice, in any department, however inferior, could possibly misunderstand the origin of my subscription to the paper in question, I cannot but entertain a strong desire to know, from what quarter you received information, and the authority of what description of persons you considered to be sufficient, to entitle you to make such an attack on a gentleman, in the same situation, certainly, in society with yourself.

I will not insult my friend Mr M'Neill, by saying one word in order to shew that he was entitled, on the part of his clients, to maintain that they were ready to prove the truth of the alleged slander. In fact, Mr M'Neill was not the real object of attack in the allusion to this paper. And an attack upon *him* on this ground *would not have answered the purpose in view.* The connection between this action by Mr Stuart and the case of Borthwick, on which it was your purpose to insist, in order to give a colour to your charge respecting the latter case, would have been entirely lost, if *Mr M'Neill alone had been represented as responsible for the conduct of the defence against Mr Stuart's action.* It was well known

that he had taken no charge, and given no advice in regard to the criminal prosecution against Borthwick, *at the instance of his Majesty's Advocate*, though he was employed as Counsel, when the case was taken up by the private party.—Indeed, knowing that he had been engaged *previously* as Counsel in the private disputes between Mr Alexander and Borthwick, and that he was Counsel for Alexander in several actions, in which that person was concerned, I purposely avoided mentioning the case of Borthwick to him, on any one occasion.—The case had likewise occurred within the circuit district on which it was then my turn to act, which naturally devolved the consideration of it on me, when the private party applied in the usual way to the Crown to prosecute, as is done in every case, which is thought fit for trial.—As the Senior Advocate-Depute, it was also my duty, in the absence of the Lord Advocate and Solicitor-General, to incur any responsibility attaching to the case.

The foundation of your charge of oppression and malicious prosecution, in the case of Borthwick, seems to rest on the feeling and temper against Mr Stuart, which you alleged to be manifested by the pleading, to which I have already adverted. But in order to give that colour to the proceedings in Borthwick's case, it was absolutely necessary to represent *me* as Counsel against Mr Stuart in the private action, since Mr M'Neill is in no degree

the grounds of that attack. But (whatever was the nature of your information)—that the circumstances in question have been anxiously, or at least hastily, and therefore unwarrantably seized hold of, for the purpose of imputing my official conduct to flagitious motives, cannot be denied. Whether you truly believed the statements which you were so forward and ready to make, is a question I cannot permit myself to ask. The injustice, illiberality, and intemperance of the comments, with which these statements were accompanied, you cannot now dispute.

Having attacked me upon this ground, it then appears, that you proceeded to accuse me of having acted, in my situation of Advocate-depute, from the influence of the same feelings to which you chose to ascribe the line of defence maintained against Mr Stuart, in the case I have already mentioned, and of having raised a prosecution against Borthwick, and of having insisted in his imprisonment, when I *could not sincerely believe that there were grounds for a trial, or entertain any intention of insisting in the charge against him.* And the *motive* to which this charge of oppression is directly imputed, is the desire to keep up a prejudice against Mr Stuart, by maintaining, *until after Mr Stuart's trial,* the appearance of a prosecution against Borthwick, in which there was no intention seriously to insist.

To that charge, I have to make a very short but

decisive answer. The Lord Advocate can inform you, that, from the moment I instituted proceedings, at the instance of the Public Prosecutor, against Borthwick, I URGED MY OWN OPINION IN THE STRONGEST AND MOST EARNEST TERMS, THAT THE CHARGE AGAINST BORTHWICK SHOULD GO TO A JURY, AT THE CIRCUIT AT GLASGOW, IN APRIL LAST, BEFORE MR STUART WAS INDICTED—in terms stronger, perhaps, than I was entitled to use, in offering any advice to his Lordship. And it is known to several of my friends, that I expressed much dissatisfaction at the delay and abandonment of that case, in consequence of instructions from the Lord Advocate. The earnestness with which I pressed my opinion, that Borthwick ought to be tried at the Spring Circuit, at Glasgow, so as to have the trial over *before Mr Stuart was indicted*, is a sufficient proof of the sincerity of my wish and intention to bring Borthwick before a jury, and that I was not actuated by the desire to maintain the appearance of a charge against Borthwick, until after Mr Stuart's trial. Indeed, so strongly impressed was I with the propriety, the expediency, and the necessity for the ends of public justice, that Borthwick should be tried at the ensuing Circuit at Glasgow, before an indictment was raised against Mr Stuart, that I at once indicted Borthwick, without communication with the Lord Advocate, (then in London,) and as the dates of the application at the instance of the Lord

Advocate for his apprehension, and of the circuit, will shew I made great exertions to complete the preparation of his indictment (which the number of productions, partly lying in Glasgow, and partly in Edinburgh, but all specially described in the indictment, rendered very troublesome) in time for the Glasgow Circuit, (April 19th,)—fifteen free days for service of the indictment being necessary.

I feel the less delicacy in stating, for my own vindication, against the imputation of insincerity and malice in this prosecution, the difference of opinion between the Lord Advocate and myself respecting this particular case, since that statement completely and necessarily relieves his Lordship from responsibility, which, by no possible inference, can fairly attach to him. He is in no respect actually, or even constructively, responsible for the proceedings instituted against Borthwick. *He* suspended for the purpose of further consideration, and *finally abandoned* the prosecution which *I* instituted. It does therefore seem to be highly unreasonable, to make him responsible for proceedings which *I* commenced, and which *He* interfered in only to stop. On the other hand, the facts of the case, and the earnestness with which I urged my own opinion to my Lord Advocate, afford real evidence, that, whether right or wrong in my notion of the case of Borthwick, I was at least perfectly sincere in my conviction, that he ought to

be tried, and in my wish to bring him before a jury. *

Whatever responsibility is to arise from the case of Borthwick, therefore, can attach *only to myself*,

* So false and injurious is the attempt to ascribe my opinion in regard to the case of Borthwick to any feelings created by the fatal and unfortunate event at Auchertool on the 26th of March, that it appears from the Crown Agent's papers, (a circumstance which had escaped my own recollection,) that on the 17th of March an application was made on the part of the Procurator-fiscal of the county of Edinburgh, stating, that the private party, Alexander, had applied to him to concur and assist in the precognition, of which it became necessary to take part in Edinburgh for the recovery of some of the articles taken from the Sentinel Office,—transmitting the precognition, in so far as it had been taken at Glasgow, and requesting the opinion and advice of the Crown Counsel on the points, whether the case was one in which that assistance ought to be given,—whether the case ought to proceed at the instance of the private party alone, or what course the Procurator-fiscal ought to follow.

On the 18th of March, eight days BEFORE *the event* at Auchtertool, it appears that I returned an opinion to the Crown Agent, for the direction of the Procurator-fiscal, in which, after stating my opinion of the case, I added, "THIS IS A CHARGE, WHICH, IF THE PRIVATE PARTY APPLIES, MUST BE TAKEN UP AT THE PUBLIC INSTANCE." The precognition was continued and nearly completed by the private party, who did, on the 29th of March, apply to the Crown to prosecute, transmitting the whole precognition; and in pursuance of the opinion I had originally formed, which the additional investigation only tended to confirm, I gave directions to the Crown Agent to proceed in the case at the instance of his Majesty's Advocate.

and I am as little inclined to shrink from that responsibility, as I am to recede from my opinion that THAT PERSON, IN THE WHOLE CIRCUMSTANCES OF HIS CASE, OUGHT TO HAVE BEEN BROUGHT BEFORE A JURY OF HIS COUNTRY.

The grounds of that opinion I shall be prepared, and shall be most ready to state when the proper occasion arrives. I am not at all afraid of meeting you either on the question as to the *legal criminality of the acts charged*, or on the question of the individual's guilt or innocence, according to the precognition laid before me, or of the expediency of prosecution in the circumstances of the case at the instance of the Lord Advocate. These are matters, however, which you promise to agitate in Parliament—the discussion of which I feel no desire to anticipate, and have no reason to dread. I do not, therefore, mean now to enter into the question whether I am right or wrong in point of law or of expediency in the view I formed of that case. I presume that your Parliamentary impeachment is not intended to be grounded merely on *error* in point of law or of expediency. You are bound to adhere to your charge of malicious and wanton oppression, or to retract that charge more honourably and candidly than it was made. You may be assured, that throughout the inquiry, of which you propose to make me the object, I shall not lose sight of the manner in which your charges were brought forward—and of the

direct imputation of malicious motives to which my conduct was ascribed; and you may perhaps find, in the result of this inquiry, that you will have some reason to regret the precipitation with which you have become the instrument of an attack, prepared and got up for you, I believe, by others.

On the 4th of May, not many days after the Glasgow Circuit terminated, Mr Alexander intimated to the Crown Agent his intention to prosecute Borthwick at his own instance, as private prosecutor. From that time the prosecution against Borthwick was at the instance of the private party alone, and was no longer under the control, direction, or management of the Public Prosecutor.

On the other matters of accusation stated by you, in regard to the treatment of that individual, I shall only say, that I distinctly deny the truth of all the statements you have made respecting the severity and illegality of his apprehension and subsequent treatment, and I am ready to shew, that nothing was done contrary to law or justice. If that individual has wrongs to complain of, he cannot fail to obtain redress in a Court of Law.

In the meantime, I cannot but admire the great liberality displayed in introducing charges of such a serious and grave character, directed equally against the Lord Advocate and myself, *without any previous communication of your intention*, and without allowing the Lord Advocate an opportunity of obtaining the information necessary to vindicate

me against the imputation of having acted oppressively, from the base and unworthy motives, which you have presumed to ascribe to me. I understand that you have *subsequently* moved for papers, with a view to inquire into the case of Borthwick. Having already, without any notice, attacked and condemned my conduct in regard to that case, in the most unqualified terms, and having roundly and broadly ascribed my conduct to the very worst motives, when there was neither time nor opportunity for defence, it certainly appears an appropriate and fit course of procedure, to *conclude* by moving for inquiry—a measure which sufficiently marks your own consciousness of the unfairness of your previous attack without inquiry.

The course which you have followed, of impeachment without notice, has been attended with this obvious and most unjust result—that the preliminary stages of Parliamentay discussion, by which public impression is mainly created, have passed against me, without the possibility of explanation or defence. Whether that is the usual course of Parliamentary procedure, in an accusation against a Law Officer of the Crown, cannot be unknown to you. The usual courtesy and candour observed in Parliament, of intimating the object of intended motions to the friends of those whose conduct is to be questioned, have been also, in my case, entirely neglected. To what circumstances I am to attri-

bute this deliberate departure, both from the usage and courtesy of Parliament, I am yet to learn.

If, however, it shall appear, that the subsequent stages of this public impeachment are not pressed forward with equal earnestness and urgency, I must be allowed to doubt, whether the manner in which the accusation has been commenced, has been regulated by a due regard to the ends of substantial justice.

I remain,

SIR,

Your obedient servant,

JOHN HOPE.

EDINBURGH, 77, *Queen Street*,
July 1, 1822.

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